

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

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| IN THE MATTER OF THE WAGE CLAIM OF BRADLEY O. VISSER, |) | Case No. 1121-2007 |
| |) | |
| Claimant, |) | FINDINGS OF FACT; |
| |) | CONCLUSIONS OF LAW; |
| vs. |) | AND ORDER |
| |) | |
| ERIK RASMUSSEN INDIVIDUALLY AND/OR D/B/A RASMUSSEN FLOOR AND CONSTRUCTION CORP, A BUSINESS NOT REGISTERED WITH THE STATE OF MONTANA, |) | |
| |) | |
| Respondent. |) | |

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I. FINDINGS OF FACT

1. Erik Rasmussen d/b/a Rasmussen Flooring and Construction, appealed from a Wage and Hour Unit determination that found Rasmussen owed unpaid wages to Bradley O. Visser of \$6,683.38 plus 110% penalty amounting to an additional \$7,351.72 resulting in a total amount due to Visser of \$14,035.10. Hearing officer Gregory L. Hanchett held a pre-hearing conference in this matter on June 4, 2007, for the purpose of setting a hearing date and pre-hearing schedule. Neither party appeared at the pre-hearing conference though required to do so.

2. As a result of the pre-hearing conference, the hearing officer issued a scheduling order on June 5, 2007 setting the matter for telephonic hearing on August 8, 2007. Copies of the scheduling order were provided to both parties by regular U.S. Mail at their respective mailing addresses. Neither copy was returned to the hearings bureau. The scheduling order notified the parties that the appellant's failure to appear at the hearing would result in the hearing officer affirming the determination of the Wage and Hour Unit.

3. Rasmussen had timely notice of the time and date of the hearing.

4. At the time and date set for the hearing, Visser appeared by telephone and indicated he was ready to proceed. The hearing officer attempted to contact Rasmussen at the only telephone number he provided to the Hearings Bureau but received only a voice message indicating that Rasmussen's voice mail box was full and no message could be left. The hearing

officer then waited 20 minutes, but received no call from Rasmussen or any representative. In conformity with the scheduling order, the hearing officer then closed the record in this matter.

5. Rasmussen has failed to make any payment of wages owed and has not yet paid any portion of the wages owed to Visser. The initial determination by the Wage and Hour Unit was accurate in the amount of the unpaid wages owed and the amount of penalty due to Visser.

II. CONCLUSIONS OF LAW

1. The State of Montana and the Commissioner of the Department of Labor and Industry have jurisdiction over this complaint under § 39-3-201 et seq. MCA. *State v. Holman Aviation* (1978), 176 Mont. 31, 575 P.2d 925.

2. Rasmussen failed to appear at hearing despite proper notice of the hearing. By failing to appear, Rasmussen has shown no reason why the original order issued by the Wage and Hour Unit should not be affirmed.

3. A review of the determination shows no legal cause why the determination should not be affirmed.

III. ORDER

Based upon the foregoing, the initial determination of the Wage and Hour Unit is affirmed. Erik Rasmussen d/b/a Rasmussen Flooring and Construction is hereby ORDERED to tender a cashier's check or money order in the amount of \$14,035.10, representing \$6,683.38 in wages and \$7,351.72 in penalty, made payable to Bradley O. Visser, and mailed to the Employment Relations Division, P.O. Box 6518, Helena, Montana 59624-6518, no later than 30 days after service of this

decision. Rasmussen d/b/a Rasmussen Flooring and Construction may deduct applicable withholding from the wage portion but not the penalty portion.

DATED this 9th day of August, 2007.

DEPARTMENT OF LABOR AND INDUSTRY

By: /s/ GREGORY L. HANCHETT
Gregory L. Hanchett
Hearings Bureau

NOTICE: You are entitled to judicial review of this final agency decision in accordance with Mont. Code Ann. § 39-3-216(4), by filing a petition for judicial review in an appropriate district court within 30 days of service of the decision. See also Mont. Code Ann. § 2-4-702.

If there is no appeal filed and no payment is made pursuant to this Order, the Commissioner of the Department of Labor and Industry will apply to the District Court for a judgment to enforce this Order pursuant to Mont. Code Ann. § 39-3-212. Such an application is not a review of the validity of this Order.